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12

Application Number

10/711,787

Filing Date

10/05/2004

First Named Inventor

John Melvin, et al

Art Unit

3751

Examiner Name

Maust, Timothy Lewis

Attorney Docket Number

10607.001

### ENCLOSURES (Check all that apply)

☐

Fee Transmittal Form

☐

Fee Attached

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Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

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Extension of Time Request

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Express Abandonment Request

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Information Disclosure Statement

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Certified Copy of Priority Document(s)

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Reply to Missing Parts/  
Incomplete Application

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under 37 CFR 1.52 or 1.53

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Drawing(s)

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Licensing-related Papers

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Petition

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Petition to Convert to a  
Provisional Application

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Power of Attorney, Revocation  
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After Allowance Communication to TC

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Appeal Communication to Board  
of Appeals and Interferences

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Appeal Communication to TC  
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Proprietary Information

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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Roy, Kiesel, Keegan and DeNicola

Signature

Printed name

Niti Duggal

Date

March 19, 2008

Reg. No.

56,182

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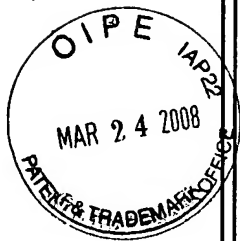
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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

APPLICANT: John Melvin, et al      TITLE: Mobile Transfilling System  
SERIAL NO.: 10/711,787      EXAMINER: Maust, Timothy Lewis  
FILING DATE: October 5, 2004      DOCKET NO.: 10607.001

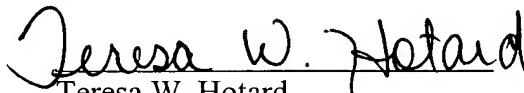
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Teresa W. Hotard



**IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE**

APPLICANT: John Melvin, et al.

TITLE: Mobile Transfilling System

SERIAL NO.: 10/711,787

ART UNIT: 3751

FILING DATE: 10/05/04

EXAMINER: Maust, Timothy Lewis

DOCKET NO.: 10, 607.001

Honorable Commissioner for Patents & Trademarks  
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**AMENDED APPEAL BRIEF**

A Notice of Appeal was filed on November 27, 2007 in response to a June 4, 2007 final Office Action. An original appeal brief was timely filed on January 25, 2008. A Notification of Non-Compliant Appeal Brief was mailed March 7, 2008. This current Amended Appeal Brief is being submitted in response to the March 7, 2008 Notification and is believed to be in compliance with the requirements of 37 CFR 41.37(c). If any extension of time is required, please consider this a request therefor. If any additional fees are due, the Commissioner is authorized and respectfully request to charge the same to Deposit Account No. 18-2210.

The Examiner's rejections are respectfully traversed, and the Board is respectfully requested to reverse the Examiner's rejections of the applicants' claims for the reasons detailed below.

I. Real Parties in Interest

The real parties in interest are John Melvin and Kenneth Carver II.

II. Related Appeals and Interferences

None.

III. Status of Claims

Claims 1-6 are in the application.

Claims 3-6 have been withdrawn from consideration.

Claims 1-2 are pending and stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mattiola et al. (4,881,375) in view of Niedwiecki et al. (6,755,225). Claims 1-2 are the claims being appealed.

IV. Status of Amendments

No amendments have been filed subsequent to the June 4, 2007 Final Office Action.

V. Summary of the Claimed Subject Matter

In one embodiment, as set forth in independent claim 1, this invention is a method for transfilling gas canisters **101** on-site comprising transporting a transfilling station **100** to a desired transfilling site; attaching gas canisters **101** to said transfilling station **100**; inspecting and evacuating said gas canisters **101**; vaporizing and compressing a gas and directing it into said gas canisters **101**; disconnecting said gas canisters **101**; and transporting said transfilling station **100** from said transfilling site. (See specification, pages 5-6, para 34-38; Figure 1)

VI. Grounds of rejection to be reviewed on appeal

Whether claims 1-2 are unpatentable under 35 U.S.C. 103(a) as being unpatentable over Mattiola et al. (4,881,375) in view of Niedwiecki et al. (6,755,225).

## VII. Arguments

### Claims 1-2

#### Claim Rejection – 35 USC § 103 (a) Obviousness

The examiner has rejected claims 1-2 as being unpatentable under 35 U.S.C. 103(a) over Mattiola et al. (4,881,375) in view of Niedwiecki et al. (6,755,225). As the examiner is aware, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. MPEP § 2143.01. The examiner has not met his burden in this regard.

There is one independent claim: claim 1 and one dependent claim: claim 2. The independent claim defines a method for transfilling gas canisters on-site including the following limitations:

- a. transporting a transfilling station to a desired transfilling site.
- b. attaching gas canisters to said transfilling station;
- c. inspecting and evacuating said gas canisters;
- d. vaporizing and compressing a gas and directing it into said gas canisters;
- e. disconnecting said gas canisters; and
- f. transporting said transfilling station from said transfilling site.

As discussed below, neither of the two cited references relied on by the examiner disclose or teach or suggest such a method.

As the examiner has correctly conceded, Mattiola fails to disclose at least one step of

applicants' claim 1: transporting a transfilling station to and from a desired transfilling site. However, the examiner contends that the combination of Mattiola with Niedwiecki would teach this step. The applicant respectfully disagrees for the following reasons.

There is no Suggestion of Motivation to Modify Mattiola

References Teach Away

As mentioned above, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. MPEP § 2143.01. However, a *prima facie* case of obviousness is *not* established when the prior art teaches away from the claimed invention or another reference. MPEP §2145. Contrary to what is required by applicant's claim 1, Mattiola expressly teaches away from portability of his transfilling station. Instead, Mattiola's station is ground-based and he has in fact acknowledged that his standard of operation involves transportation of the individual cylinders to and from the fixed ground-based transfilling station, as opposed to transportation of the station itself. Mattiola expressly states: "The liquefied gas is stored in large storage tanks to periodically refill **cylinders** with high pressure gas which are then **transported** to the place of use." (*See*, Mattiola at column 1, ll. 13-18). Thus, Mattiola clearly does not envision his transfilling station as portable or mobile. This non-mobility aspect of Mattiola's transfilling system is contrary to the primary objective of the applicant's invention and contrary to the mobility limitation that is expressly included in applicant's claim 1.

### Change in Principal of Operation

Furthermore, if the proposed modification destroys the intent, purpose or function of the prior art invention, then there is no suggestion or motivation to make the proposed modification.

MPEP § 2143.01

The Mattiola reference begins with a discussion of standard, prior art ground-based filling stations and the problems associated with same, mainly that these prior art filling stations involve manual procedures, i.e. the manual sniff test, the manual control of the pump operation, etc. that are undesirable. Accordingly, to reduce or eliminate the manual labor involved with such stations, Mattiola proposes a transfilling system that is automated. Thus, the system described in the Mattiola patent is the addition of automation to a standard, ground-based transfilling system. To achieve this automation, Mattiola proposes the use of a vast amount of automated equipment, such as various computer software and hardware devices, automated valves, automated analyzers, automated sensors, etc. Thus, the principal of operation of Mattiola is to achieve an efficient *automated* refill system. Furthermore, the vast amount of equipment involved in Mattiola's detailed automated system necessitates that the system be ground-based. As discussed above, Mattiola has even expressly acknowledged that his system is ground-based and that his standard of operation involves transportation of the individual canisters to and from the fixed ground-based transfilling station, as opposed to transportation of the station itself. (*See*, Mattiola at column 1, ll. 13-18). However, if one attempted to transport Mattiola's automated equipment over roads and highways, then one would have to consider the compromising effects of road shock/wear and tear on the operating capabilities of the automated

equipment. Accordingly, an attempt to make the Mattiola's automated *ground-based* system into an automated *mobile* system would be quite complicated and impractical, if not impossible. On the other hand, Niedwiecki principle concern is not automation, nor does Niedwiecki teach the use of a vast amount of automation equipment, and therefore he is able to achieve a *small, lightweight, and mobile* transfilling system. Niedwiecki specifically and repeatedly indicates that "a **small** trailer suitable for towing by a passenger vehicle..." would be a preferable example of his system (See, Niedwiecki at Col. 2, lines 20-23) and that "a hydrogen storage medium ...that is relatively **lightweight** and safe would be desirable." (See, Niedwiecki at Col. 1, lines 39-41) Mattiola on the other hand, proposes the use of a vast amount of equipment to achieve his goal of automation and contemplates the use of **large** storage spaces/equipment: "The liquefied gas is stored in **large** storage tanks to periodically refill cylinders with high pressure gas which are then transported to the place of use." (See, Mattiola at column 1, ll. 13-18). Thus, Niedwiecki does not teach that the vast amount of automation equipment utilized in Mattiola can be made portable within Niedwiecki's compact system, while simultaneously preserving Mattiola's automation features. Accordingly, if Mattiola were to be modified, then automation would be lost for the sake of portability, and this would fundamentally alter the principle of operation of Mattiola's system. As mentioned above, if the proposed modification renders the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. MPEP § 2143.01

The examiner, in his last Office Action, contends that Mattiola's automation would not be lost, because Niedwiecki discloses a microprocessor, which according to the Examiner, must



mean that Niedwiecki achieves a system that is both portable and automated. However, the mere fact that Niedwiecki utilizes a microprocessor does not automatically mean that Niedwiecki's system is fully automated. The use of one or two automated pieces of equipment does not equate to a full-blown automated system, as taught by Mattiola. As discussed above, Niedwiecki's principle concern is not automation. In fact, Niedwiecki specifically contemplates a system having manual aspects. (See, Niedwiecki at column 6, ll. 58-59, disclosing manual control valves). In contrast, Mattiola teaches the elimination of manual aspects in his system and proposes a full-blown automated system which would necessitate a ground-based system. In summary, Niedwiecki is not concerned with automation. Instead, Niedwiecki is concerned with achieving a small portable compact system and utilizing equipment that would be confinable within such a small compact system. This equipment could include both automated and non-automated equipment. Mattiola, on the other hand, is concerned with achieving a fully automated and expansive system and the issues of portability and small spaces, that are critical to Niedwiecki, are expressly disclaimed by Mattiola, as discussed above.

In conclusion, for all the aforementioned reasons, the examiner's obviousness rejection under 35 U.S.C. § 103 is not well founded, and the examiner is respectfully requested to withdraw his rejection of independent claim 1. Claim 2 depends on independent claim 1; therefore, claim 2 should be allowable as well. MPEP § 2143.03.

The examiner has also twice noted the standard for the proper abstract, however has not made any objection to same. The applicants are quite willing to make any changes necessary,

however the applicants are unclear as to what, if anything, the examiner is contending is objectionable to the abstract.

VIII. Claims Appendix

An appendix of the claims involved in the appeal is attached.

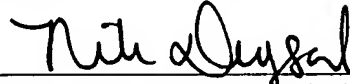
IX. Evidence Appendix

There is no evidence being submitted pursuant to §§1.130, 1.131, or 1.132.

X. Related Proceedings Appendix

There are no related proceedings.

Respectfully submitted:



Niti Duggal, PTO Reg. 56,182

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Date: 3/19/08

Claims Appendix

CLAIMS PRESENTED ON APPEAL

- Claim 1      A method for transfilling gas canisters on-site comprising:
- transporting a transfilling station to a desired transfilling site;
- attaching gas canisters to said transfilling station;
- inspecting and evacuating said gas canisters;
- vaporizing and compressing a gas and directing it into said gas canisters;
- disconnecting said gas canisters; and
- transporting said transfilling station from said transfilling site.
- Claim 2      The method of transfilling gas canisters on-site of claim 1 wherein said gas is
- medical oxygen.